

16B C.J.S. Constitutional Law § 1277

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Constitutional Law

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PART VI. Privileges and Immunities; Equal Protection


XVI. Equal Protection of the Laws

C. Tests of Judicial Analysis

§ 1277. Strict scrutiny test—Fundamental rights

Topic Summary | References | Correlation Table

West's Key Number Digest

West's Key Number Digest, Constitutional Law  2970, 2972 to 2975, 2977 to 2979, 2981, 2982, 2985, 2991, 3032, 3035, 3036, 3039, 3041, 3043, 3050, 3057, 3060 to 3065, 3067, 3070 to 3072, 3073(1), 3074 to 3077, 3079, 3080, 3082, 3103, 3128, 3142, 3165, 3180, 3184, 3188, 3192, 3193, 3200, 3205, 3213, 3225, 3241, 3315, 3335 to 3437, 3475 to 3477, 3735, 3736, 3738 to 3740, 3742, 3765 to 3767, 3784, 3786, 4866

Strict scrutiny applies to an analysis of classifications impinging on such fundamental rights as marriage and procreation, voting, and the right to travel.

The fundamental rights which give rise to strict scrutiny analysis include the right to vote¹ and to travel,² the right to marriage,³ privacy,⁴ procreation,⁵ certain aspects of criminal procedure or process,⁶ First Amendment rights,⁷ freedom of association,⁸ and, according to some courts, education, under the particular state's constitution.⁹ For the purpose of an equal protection challenge to a statute, fundamental rights are those rights that are deeply rooted in the Nation's history and traditions and implicit in the concept of ordered liberty.¹⁰

However, various particular rights and interests have been excluded from the concept of fundamental right for the purpose of judicial analysis, such as the general right to absolute liberty,¹¹ discharge in bankruptcy,¹² education,¹³

and employment and wages.¹⁴ Furthermore, the mere fact that a legislative classification impacts upon the criminal trial or appellate process is insufficient to require a strict scrutiny analysis.¹⁵

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Footnotes

- 1 U.S.—Green v. City of Tucson, 340 F.3d 891 (9th Cir. 2003); Woodhouse v. Maine Com'n on Governmental Ethics and Election Practices, 40 F. Supp. 3d 186 (D. Me. 2014).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Okla.—Gladstone v. Bartlesville Independent School Dist. No. 30 (I-30), 2003 OK 30, 66 P.3d 442 (Okla. 2003).
- 2 U.S.—U.S. v. Klinzing, 315 F.3d 803, 60 Fed. R. Evid. Serv. 748 (7th Cir. 2003); Pollack v. Duff, 958 F. Supp. 2d 280 (D.D.C. 2013).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Idaho—In re Bermudes, 141 Idaho 157, 106 P.3d 1123 (2005).
- 3 U.S.—Dittmer v. County of Suffolk, 188 F. Supp. 2d 286 (E.D. N.Y. 2002), judgment aff'd, 59 Fed. Appx. 375 (2d Cir. 2003).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Nev.—Gaines v. State, 116 Nev. 359, 998 P.2d 166 (2000).
Same-sex couples
(1) Alabama's marriage sanctity laws, prohibiting same-sex marriage, violate the Due Process Clause and Equal Protection Clause by restricting the fundamental marriage right, without serving a compelling state interest. Same-sex couples did not have a constitutionally protected right to marry, as the threshold step in the equal protection analysis, and thus, state laws restricting marriage to opposite sex couples did not violate equal protection.
Ala.—Strawser v. Strange, 44 F. Supp. 3d 1206 (S.D. Ala. 2015).
(2) Regardless of whether sexual orientation is an immutable characteristic, it is fundamental to a person's identity, which is sufficient to meet the immutability factor in determining, for equal protection purposes, whether a class is suspect or quasi-suspect.
U.S.—Wolf v. Walker, 986 F. Supp. 2d 982 (W.D. Wis. 2014).
- 4 Alaska—Treacy v. Municipality of Anchorage, 91 P.3d 252 (Alaska 2004).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
Nev.—Williams v. State, 118 Nev. 536, 50 P.3d 1116 (2002).
- 5 U.S.—U.S. v. Williams, 124 F.3d 411 (3d Cir. 1997).
Ohio—State v. Williams, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).
Okla.—Gladstone v. Bartlesville Independent School Dist. No. 30 (I-30), 2003 OK 30, 66 P.3d 442 (Okla. 2003).
- 6 U.S.—Provident Mut. Life Ins. Co. of Philadelphia v. City of Atlanta, 864 F. Supp. 1274 (N.D. Ga. 1994).
- 7 U.S.—U.S. v. Williams, 124 F.3d 411 (3d Cir. 1997);
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).
- 8 U.S.—Provident Mut. Life Ins. Co. of Philadelphia v. City of Atlanta, 864 F. Supp. 1274 (N.D. Ga. 1994).
Conn.—Hammond v. Commissioner of Correction, 259 Conn. 855, 792 A.2d 774 (2002).
N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).
- 9 N.M.—Cummings v. X-Ray Associates of New Mexico, P.C., 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).
- 10 Mo.—State v. Pike, 162 S.W.3d 464 (Mo. 2005).

- 11 D.C.—Matter of L. M., 432 A.2d 692 (D.C. 1981).
12 U.S.—U.S. v. Kras, 409 U.S. 434, 93 S. Ct. 631, 34 L. Ed. 2d 626 (1973).
13 U.S.—Colorado Seminary (University of Denver) v. National Collegiate Athletic Ass'n, 417
F. Supp. 885 (D. Colo. 1976), judgment aff'd, 570 F.2d 320 (10th Cir. 1978).
La.—Chabert v. Louisiana High School Athletic Ass'n, 323 So. 2d 774 (La. 1975).
14 U.S.—Sam v. U. S., 230 Ct. Cl. 596, 682 F.2d 925 (1982).
Pursuit of chosen profession
Cal.—Kubik v. Scripps College, 118 Cal. App. 3d 544, 173 Cal. Rptr. 539 (2d Dist. 1981).
15 U.S.—Tarter v. James, 667 F.2d 964 (11th Cir. 1982).

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